

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39-M) for Authorization, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2007.

Application 05-12-002
(Filed December 2, 2005)

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company (U 39-M).

Investigation 06-03-003
(Filed March 2, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING IN PART AND DENYING IN PART PACIFIC GAS
AND ELECTRIC COMPANY'S MOTION TO STRIKE PORTIONS OF
GREENLINING INSTITUTE'S TESTIMONY**

On May 11, 2006, Pacific Gas and Electric Company (PG&E) filed a motion to strike portions of the Greenlining Institute's (GI) written testimony. GI filed a response on May 15, 2006, and PG&E filed a reply on May 17, 2006. This Ruling grants PG&E's motion in part and denies the motion in part, as set forth herein. This Ruling was made after consultation with the assigned Commissioner.

PG&E's Motion

PG&E moves to strike the following matters in GI's testimony:

- GI's proposal to increase PG&E's philanthropy and the portion of PG&E's philanthropy going to underserved communities.
- GI's proposal to revise PG&E's General Order (GO) 77-L reports to show (1) PG&E officer compensation next to PG&E's philanthropy,

- and (2) CEO compensation next to overall cash philanthropy and/or philanthropy to underserved communities.
- GI's testimony regarding (1) use of nuclear power to reduce dependence on oil and gas, and (2) access to the California Solar Initiative (CSI) program for renters, minorities, and low income customers.
 - The qualifications of GI's expert witness Michael Phillips concerning his experience in PG&E's last general rate case (GRC) regarding the Senior Executive Retention Program.¹

PG&E contends that the portions of GI's written testimony that it moves to strike are outside the scope of this proceeding and/or are being addressed in other Commission proceedings. If any part of its motion is denied, PG&E requests the opportunity to file rebuttal testimony.

Greenlining's Response

GI opposes PG&E's motion to strike. GI responds that its testimony on philanthropy is appropriate because the Commission has historically addressed philanthropic issues in GRCs. For example, in Decision (D.).06-05-016 regarding Southern California Edison Company's (SCE) most recent GRC, the Commission

¹ The specific portions of GI's testimony that PG&E moves to strike are (1) *Testimony of John C. Gamboa on Behalf of the Greenlining Institute on PG&E's Workforce Diversity, Supplier Diversity, Philanthropy, Payment Centers, and Energy Efforts* that address PG&E's philanthropy (page 8, line 13 through page 9), GO 77-L (page 11, line 18 through page 12, line 13), and energy issues (page 13, line 5 through page 15, line 4); and (2) *Testimony of Michael Phillips on Behalf of the Greenlining Institute on PG&E's Workforce Diversity, Supplier Diversity, Philanthropy, Payment Centers, and Energy Efforts* that address retention payments to executives that were discussed in PG&E's 2003 GRC, Decision (D.) 04-05-055 (page 2, line 37 through page 3, line 50), and GO 77-L (page 10, lines 10 through 16).

urged SCE to “give due consideration to President Peevey’s stated opinions and preferences in this area when determining its philanthropic goals.”²

GI contends that its proposal to revise PG&E’s GO 77-L reports will enable GI to compare executive compensation with the amount of philanthropy. GI also believes that issues regarding GO 77-L are relevant to GRCs, as demonstrated by D.06-05-016 wherein the Commission required SCE to provide more information in its GO 77-L reports regarding the retirement and severance benefits for SCE’s top executives.³

GI disputes PG&E’s contention that GI’s testimony regarding nuclear and solar energy should be stricken because these issues are not within the scope of the proceeding. GI states that its nuclear and solar testimony merely points out that the Commission’s actions in PG&E’s GRC proceeding must be coordinated with other proceedings.

Finally, GI argues that it is inappropriate to strike the portions of GI’s testimony regarding the qualifications of its witness, Michael Phillips. GI states that the testimony lays a foundation for Phillips’ expertise.

Ruling

1. Philanthropy

PG&E’s motion to strike GI’s testimony regarding PG&E’s philanthropic practices is granted. The Assigned Commissioner’s Ruling and Scoping Memo dated February 3, 2006, excluded from the scope of this proceeding issues regarding the type, amount, and beneficiaries of PG&E’s philanthropy because

² D.06-05-016, *mimeo.*, p. 183.

³ *Id.*, pp. 184-185.

the associated costs are borne by PG&E's shareholders, not ratepayers.⁴ The philanthropic issues raised by GI fall squarely within the ambit of the assigned Commissioner's ruling.

GI argues that philanthropy has historically been addressed in GRCs. It is true that there was some peripheral consideration of philanthropy in SCE's recent GRC. Even so, the decision in that case supports the assigned Commissioner's ruling to exclude philanthropic issues from the instant proceeding. In D.06-05-016, the Commission held that it has "no jurisdiction to order a change in SCE's giving practices," and declined GI's attempt to link SCE's executive compensation package to its philanthropy.⁵

2. GO 77-L

For the reasons stated previously, PG&E's motion to strike GI's proposal to revise PG&E's GO 77-L reports to show philanthropic practices is granted. Further, the Commission is considering revisions to GO 77-L in Rulemaking (R.) 05-10-030. GI's proposal to revise PG&E's GO 77-L reports should be addressed, if at all, in R.05-10-030.

3. Energy Issues

PG&E's motion to strike GI's testimony regarding solar and nuclear energy is granted. All the issues raised by GI regarding solar energy have either been addressed in D.06-01-024, which adopted the CSI, or will be addressed in R.06-03-004, which will implement the CSI. Similarly, GI's testimony that nuclear power should be considered as an alternative to oil and gas is more

⁴ Assigned Commissioner's Ruling and Scoping Memo, p. 3.

⁵ D.06-05-016, *mimeo.*, pp. 183 - 184.

appropriately considered in R.06-02-013, the Long-Term Procurement Proceeding. That proceeding is designed to explore a comprehensive set of procurement policies and long-term procurement plans.⁶

GI's testimony also announces its intent to cross examine PG&E witnesses about how diversity may be affected by the retirement of "23,000 nuclear workers over the next few years and the building or rebuilding of new and existing nuclear plants." The instant proceeding is not an appropriate forum to address issues affecting 23,000 employees nationwide. Further, PG&E does not propose in the instant proceeding to build new nuclear plants or to significantly rebuild its existing nuclear power plant. Hence, the issue raised by GI is not present in this proceeding.

4. Witness Qualifications

PG&E's moves to strike portions of the qualifications of GI's expert witness Michael Phillips. PG&E argues that Phillips' qualifications contain unnecessary comments about PG&E's executive retention payments. PG&E adds that it is unclear how this testimony establishes Phillips' qualifications. PG&E's motion is denied because PG&E's concerns are more appropriately addressed through *voir dire*.

PG&E requests an opportunity to file rebuttal testimony if any part of its motion is denied. PG&E's request is denied, as PG&E will have an opportunity to conduct *voir dire*.

⁶ Contrary to GI's assertion in its response, its testimony goes far beyond merely trying to keep PG&E's GRC consistent with other proceedings.

Therefore, **IT IS RULED** that:

1. Pacific Gas and Electric Company's (PG&E) motion to strike the following parts of the Greenlining Institute's written testimony is granted: *Testimony of John C. Gamboa on Behalf of the Greenlining Institute on PG&E's Workforce Diversity, Supplier Diversity, Philanthropy, Payment Centers, and Energy Efforts*, page 8, line 13 through page 9; page 11, line 18 through page 12, line 13; and page 13, line 5 through page 15, line 4.
2. PG&E's motion to strike the following is granted: *Testimony of Michael Phillips on Behalf of the Greenlining Institute on PG&E's Workforce Diversity, Supplier Diversity, Philanthropy, Payment Centers, and Energy Efforts*, page 10, lines 10 through 16.
3. PG&E's motion to strike the following is denied: *Testimony of Michael Phillips on Behalf of the Greenlining Institute on PG&E's Workforce Diversity, Supplier Diversity, Philanthropy, Payment Centers, and Energy Efforts*, page 2, line 37 through page 3, line 50.

Dated May 22, 2006, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting In Part and Denying in Part Pacific Gas and Electric Company's Motion to Strike Portions of Greenlining Institute's Testimony on all parties of record in this proceeding or their attorneys of record.

Dated May 22, 2006, at San Francisco, California.

/s/	FANNIE SID
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	Fannie Sid

NOTICE

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